IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 2ND JANUARY 2007 / 12TH POUSHA 1928

Crl.MC.No. 3673 of 2006()

CMP.5538/2006 of JUDL.MAGISTRATE OF FIRST CLASS-II, ERNAKULAM

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PETITIONER: CLAIM PETITIONER:

N.A.JOSE, NADUVELIPARAMBIL,
CHERANELLORE, EDAPPALLY.

BY ADV. SRI.N.K.MOHANLAL

RESPONDENTS: RSEPONDENTS:

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1. SUB INSPECTOR OF POLICE,
   CITY TRAFFIC POLICE STATION,
   EDAPPALLY.

2. P.M.AFSAL, PUTHENPARAMBIL,
   PULINKUNNUKARA, ERUMELI NORTH VILLAGE,
   KANJIRAPPALLY.

3. REOLANT HIRE PURCHASE COMPANY LIMITED,
   KTK ESTATE, KOTHAMANGALAM.

4. STATE OF KERALA, REPRESENTED BY
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. K.A.AKBAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 02/01/2007, ALONG WITH CRMC NO. 3898 OF 2006 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.Nos.3673 and 3898 of 2006

Dated this the 2nd day of January, 2007

ORDER

The common petitioner in this Crl.M.Cs assails the order passed by the learned Magistrate making the release of a vehicle-lorry, in favour of the 2nd respondent-the registered owner of the vehicle.

2. That the 2nd respondent is the registered owner of the vehicle is not disputed. There is a dispute as to whether there is an agreement executed by the 2nd respondent and the petitioner regarding sale of the vehicle and whether the petitioner is entitled for possession of the vehicle. To resolve that controversy, no acceptable documents were produced before the learned Magistrate. It was in these circumstances that the learned Magistrate passed the impugned order under which the claim of the registered owner was accepted and the claim of the petitioner-alleged owner under an agreement was turned down.

3. The learned counsel for the petitioner submits that the petitioner is really the legal owner of the vehicle and the vehicle was in his possession when the vehicle met with the accident. The learned counsel for the respondent on the contrary contends that the alleged agreement is not genuine and no such agreement was entered into at all. The learned counsel for the petitioner submits that he was not in

a position to produce the original agreement on account of reasons beyond his control. He prays that the petitioner may be granted an opportunity to raise and substantiate his contention that he was having possession of the vehicle as its true owner at the time of seizure of the vehicle under an agreement, the original of which is produced before this Court as Annexure-A2 in Crl.M.C.3673 of 2006.

4. The vehicle has now been released to the registered owner, ie. the 2nd respondent. He is keeping possession of the same after complying with the conditions imposed in the order dated 20.10.2006.

5. Having considered all the relevant inputs, I am satisfied that though the failure/omission of the petitioner to produce the original of the agreement before the learned Magistrate is contumacious, a further opportunity can be granted to the petitioner to substantiate his contentions before the learned Magistrate and claim release of the lorry in his favour. The learned Magistrate shall give the parties an opportunity to make further pleadings, if any necessary and also to substantiate their respective contentions. Thereafter, the learned Magistrate shall pass appropriate fresh orders under Section 451 Cr.P.C. The impugned orders can be set aside. But the direction for release of the vehicle to the registered owner-the 2nd respondent, shall be reckoned as interim direction which shall

hold the field until fresh orders are passed by the learned Magistrate on merits as indicated above.

6. These Crl.M.Cs are, in these circumstances, allowed in part to the extent indicated above. Parties shall appear before the learned Magistrate on 15.01.2007 to continue the proceedings. The original agreement produced as Annexure-A1 in Crl.M.C.3673 of 2006 shall be returned to the petitioner's counsel forthwith by the Registry.

(R.BASANT, JUDGE)

rtr/-